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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/311,611	05/13/1999	FRANK B. NORMAN	SWA-3.2.016/	1463
26345	7590	01/05/2004	EXAMINER	
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE 1 RIVERFRONT PLAZA NEWARK, NJ 07102-5497			TRAN, HAI V	
			ART UNIT	PAPER NUMBER
			2611	12

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/311,611

**Applicant(s)**

NORMAN, FRANK B.

**Examiner**

Hai Tran

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-36 and 38-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Response to Arguments***

The Examiner respectfully disagrees with Applicant regarding the cited reference Dasan (US 5761662) has a filing date of May 8, 1997, nearly one year after the Applicant's application filing date of June 24, 1996 because Dasan (US 5761662) is a continuation of Applicant Ser. No. 360,997 with a filing date of December 20, 1994. Thus, the Examiner maintains the previous Examiner's Official Notice in which Dasan's effective date is December 20, 1994 and not May 8, 1997 as stated by Applicant.

The Examiner agrees with Applicant regarding the claimed limitations "Providing a database of program schedule information" and "Coordinating the subscriber activities with the schedule information to provide statistic of practical value to content providers" that were not addressed in the previous Office Action. Thus a new ground of rejection follows<sup>5</sup>.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claims 22-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aras et al. (US 5872588) in view of Herz et al. (US 5758257) and further in view of Dillon 5995725).

Claims 22, 25, 33 and 38-39, Aras discloses a method of monitoring a DBS service subscriber's station to obtain audience rating measurements indicative of the DBS subscriber's viewing habits, comprising the steps of:

Local Distribution Network's cloud between DBS server (101, 103, 121) and DBS subscriber station (111) in which the communication path is providing respective full-time communication paths (always available/ready for the user to access; see Fig. 4B); for transmitting a query message over the network (Local Distribution Network's cloud) from the DBS server to the subscriber (Col. 17, lines 57-63) and enabling the service subscriber's station to receive the query message and to respond to the query message by sending back subscriber activities (behavior collection table) accumulated by the subscriber's station (Col. 12, lines 40-Col. 14, line 24 and Col. 17, lines 57-63);

Aras does not disclose "Providing a database of program schedule information"; "Coordinating the subscriber activities with the schedule information to provide statistic of practical value to content providers". However, Aras discloses at the central facility, the data is collated/analyzed to determine or identify the program watched from viewer for statistical purpose (Col. 1, lines 50-Col. 2, lines 56; Col. 12, lines 40-Col. 13, lines 23 and col. 26, lines 44-Col. 27, lines 14).

Herz discloses providing a database of program schedule information coordinating the subscriber activities with the schedule information to provide statistic of practical value to content providers (Fig. 5; Col. 8, lines 47-55; Col. 22, lines 56-Col. 26, lines 50; Col. 41, lines 57-Col. 42, lines 25; Col. 46, lines 63-Col. 47, lines 10) and further discloses transmitting a query message over the network from the CATV headend 502 to the subscriber and enabling the service subscriber's station to receive the query message and to respond to the query message by sending back subscriber activities accumulated by the subscriber's station (Col. 41, lines 19-56; Col. 43, lines 3-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Aras with Herz so the users could receive data or video programming customized to their objective preferences as suggested by Herz (Col. 4, lines 17-31).

Aras and Herz both do not disclose "Connecting the DBS subscriber station to a 1<sup>st</sup> Internet interface"; "Connecting a DBS server to a second Internet interface"; and a "communication path between the 1<sup>st</sup> and 2<sup>nd</sup> Internet interfaces and an ISP"; However, Aras discloses Local Distribution Network's cloud (path) is between DBS server (101, 103, 121) and DBS subscriber station (111) see Fig. 4B; the Local Distribution Network's cloud (path) connects the DBS subscriber station (111) to a 1<sup>st</sup> network interface (1557; fig. 15; Col. 25, lines 7-17, Col. 26., lines 33-41, col. 12, lines 40-54; col. 6, lines 30-44 and col. 24, lines 29-42) and the Local Distribution Network's cloud (path) also connects a DBS server (101, 103, 121) to a 2<sup>nd</sup> network

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interface (Local Distribution Network; Fig. 4) and Herz discloses a return path (telephone network; see Fig. 5) between the Set-top terminal 412 and the CATV headend (Col. 42, lines 46-56).

Dillon discloses Fig. 1 communication path between the 1<sup>st</sup> and 2<sup>nd</sup> Internet interfaces and an ISP in which the communication path connects the DBS subscriber station (150) to a 1<sup>st</sup> Internet interface and the communication path further connects a DBS server (110, 190, 130) to a 2<sup>nd</sup> Internet interface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Aras and Herz with Dillon so to take the advantage of the conventional Internet connection to reduce the cost of satellite communications by using one-way satellite link instead of two-way Satellite communication (Col. 3, lines 29-43) and furthermore, for data being sent into the network by using a "spoofing" technique to solve the problem of long propagation delays inherent in satellite transmission (Col. 1, lines 50-58) and also to provide users an alternative way to access the Internet.

Claims 23, 24, 34 and 36 are met by the combined systems of Aras, Herz and Dillon, wherein Aras (Col. 17, lines 57-62) and Herz (Fig. 5; Col. 42, lines 60-Col. 43, lines 15) both discloses periodic transmission of the table or table of requested by the behavior collection center when the data table is nearing full or any combination thereof.

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Claim 26, Aras further discloses that the behavior collection table (BCT) comprises turn on (power on), tuned channel, time and channel identification when changed, mute, turn off (power off), any combination of the above and timer events (Abstract Col. 14, lines 7-24).

Aras in view of Herz and Dillon do not clearly disclose a time is applied to the sound/volume is muting or the muting sound/volume is cancelled as recite in the claim. However, the collection about the time whether the sound of volume is muted or the muting sound is cancelled is more specific and detailed than just collecting the general sound/volume that is mute. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Aras in view of Herz and Dillon by including a time when the sound muting is applied and time when the sound muting is cancelled into the viewing habit of users so to determine the success of the television programs being provided to users so that the cable operators are better able to plan future programming based on the actual viewing habits and advertisers are able to make better decisions about markets in which to broadcast their commercial messages.

Regarding claims 27 and 35, Aras (on the fly; Col. 17, lines 57-62) and Herz (Col. 42, lines 60-65) further disclose the collected data is reported back to the BCC or headend in real-time.

Regarding claim 28-30, Aras (Col. 17, lines 57-62) and Herz (Col. 42, lines 60-Col. 43, lines 12) further disclose periodic transmission of collected data to the collection center (BCC) or headend when the collected data/profile/habit table is nearing full or in any combination thereof.

Regarding claims 31 and 40, Aras, Herz and Dillon does not clearly disclose wherein the subscriber station posts the information to a WWW page and the data collection retrieves the information from the WWW page on a periodic basis.

Official Notice is taken that posting information/data to a WWW page and having a remote computing system to retrieve the information/data posted from the WWW page on a periodic basis (Fig. 4) via Internet. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Aras in view of Herz and Dillon to have the collected data/profile/history on a WWW page so to take the advantage of the independent communication platform of the World Wide Web or Internet in which any computing systems (i.e. provider) could access and retrieve the Web page posted at the remote location (i.e. subscriber terminal).

Regarding claim 32, Aras (Col. 17, lines 57-62) and Herz (Col. 42, lines 60-65) further discloses the subscriber terminal/receiver transfers the information (collected data table/profile/history) to the data collect point (BCC/headend) in response to the query message received from the data collection point



(BCC/headend) via the network (Aras ' local distribution network Fig. 4b and Herz Fig. 5);

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McMullan, Jr. (US 5251324) shows method and apparatus for generating and collecting viewing statistics for remote terminals in a cable television system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is 703-308-7372.

The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.



HAITRAN  
PATENT EXAMINER

HT:ht  
December 18, 2003